



General Assembly

**Substitute Bill No. 386**

February Session, 2004

\* SB00386GAE\_\_031704\_\_ \*

**AN ACT CONCERNING WHISTLEBLOWER COMPLAINTS AND CIVIL  
RECOVERY OF MISAPPROPRIATED FUNDS.**

Be it enacted by the Senate and House of Representatives in General  
Assembly convened:

1 Section 1. Section 4-61dd of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2004*):

3 (a) Any person having knowledge of any matter involving  
4 corruption, unethical practices, violation of state laws or regulations,  
5 mismanagement, gross waste of funds, abuse of authority or danger to  
6 the public safety occurring in any state department or agency or any  
7 quasi-public agency, as defined in section 1-120, or any person having  
8 knowledge of any matter involving corruption, violation of state or  
9 federal laws or regulations, gross waste of funds, abuse of authority or  
10 danger to the public safety occurring in any large state contract, may  
11 transmit all facts and information in [his] such person's possession  
12 concerning such matter to the Auditors of Public Accounts. The  
13 Auditors of Public Accounts shall review such matter and report their  
14 findings and any recommendations to the Attorney General. Upon  
15 receiving such a report, the Attorney General shall make such  
16 investigation as [he] the Attorney General deems proper. Nothing in  
17 this section shall be construed to limit such investigation to the  
18 allegations or information transmitted pursuant to this section. At the  
19 request of the Attorney General or on their own initiative, the auditors

20 shall assist in the investigation. The Attorney General shall have power  
21 to summon witnesses, require the production of any necessary books,  
22 papers or other documents and administer oaths to witnesses, where  
23 necessary, for the purpose of an investigation pursuant to this section  
24 or sections 2 to 5, inclusive, of this act. Upon the conclusion of [his] the  
25 investigation, the Attorney General shall where necessary, report [his]  
26 any findings to the Governor, or in matters involving criminal activity,  
27 to the Chief State's Attorney. [The] In addition to the exempt records  
28 provision of section 1-210, as amended, the Auditors of Public  
29 Accounts and the Attorney General shall not, after receipt of any  
30 information from a person under the provisions of this section or  
31 sections 2 to 5, inclusive of this act, disclose the identity of such person  
32 without [his] such person's consent unless the Auditors of Public  
33 Accounts or the Attorney General determine that such disclosure is  
34 unavoidable, and may withhold records of such investigation, during  
35 the [course] pendency of the investigation.

36 (b) (1) No state officer or employee, as defined in section 4-141, no  
37 quasi-public agency officer or employee, no officer or employee of a  
38 large state contractor and no appointing authority shall take or  
39 threaten to take: (A) [any] Any personnel action against any state or  
40 quasi-public agency employee or any employee of a large state  
41 contractor, or (B) any action to impede or terminate a contract between  
42 a state agency and a large state contractor in retaliation for such  
43 employee's or contractor's disclosure of information to an employee of  
44 (i) the Auditors of Public Accounts or the Attorney General under the  
45 provisions of subsection (a) of this section or sections or sections 2 to 5,  
46 inclusive, of this act; (ii) the state agency or quasi-public agency where  
47 such state officer or employee is employed; (iii) a state agency  
48 pursuant to a mandated reporter statutes; or (iv) in the case of a large  
49 state contractor, to an employee of the contracting state agency  
50 concerning information involving the large state contract.

51 (2) If a state or quasi-public agency employee or an employee of a  
52 large state contractor alleges that a personnel action has been  
53 threatened or taken in [retaliation for such employee's disclosure of

54 information to the Auditors of Public Accounts or the Attorney  
55 General under the provisions of subsection (a) of this section,]  
56 violation of subdivision (1) of this subsection the employee may notify  
57 the Attorney General, who shall investigate pursuant to subsection (a)  
58 of this section. [After the conclusion of such investigation, the Attorney  
59 General, the employee or]

60 (3) (A) Not later than thirty days after learning of the specific  
61 incident giving rise to a claim that a personnel action has been  
62 threatened or has occurred in violation of subdivision (1) of this  
63 subsection, a state or quasi-public agency employee, an employee of a  
64 large state contractor or the employee's attorney may file a complaint  
65 concerning such personnel action with the Chief Human Rights  
66 Referee designated under section 46a-57. The Chief Human Rights  
67 Referee shall assign the complaint to a human rights referee appointed  
68 under said section 46a-57, who shall conduct a hearing and issue a  
69 decision concerning whether the officer or employee taking or  
70 threatening to take the personnel action violated any provision of this  
71 section. If the human rights referee finds such a violation, the referee  
72 may award the aggrieved employee reinstatement to the employee's  
73 former position, back pay and reestablishment of any employee  
74 benefits to which the employee would otherwise have been eligible if  
75 such violation had not occurred, reasonable attorneys' fees, and any  
76 other damages. For the purposes of this subsection, such human rights  
77 referee shall act as an independent hearing officer. The decision of a  
78 human rights referee under this subsection may be appealed by any  
79 person who was a party at such hearing, in accordance with the  
80 provisions of section 4-183.

81 ~~[(3)]~~ (B) The Chief Human Rights Referee shall adopt regulations, in  
82 accordance with the provisions of chapter 54, establishing the  
83 procedure for filing complaints and noticing and conducting hearings  
84 under [subdivision (2) of this subsection] subparagraph (A) of this  
85 subdivision.

86 (4) As an alternative to the provisions of subdivisions (2) and (3) of

87 this subsection (A) a state or quasi-public agency employee who  
88 alleges that a personnel action has been threatened or taken may file an  
89 appeal within thirty days of knowledge of the specific incident giving  
90 rise to such claim with the Employees' Review Board under section 5-  
91 202, or, in the case of a state or quasi-public agency employee covered  
92 by a collective bargaining contract, in accordance with the procedure  
93 provided by such contract, or (B) an employee of a large state  
94 contractor alleging that such action has been threatened or taken may,  
95 after exhausting all available administrative remedies, bring a civil  
96 action in accordance with the provisions of subsection (c) of section 31-  
97 51m.

98 (5) In any proceeding under subdivision (2), (3) or (4) of this  
99 subsection concerning a personnel action taken or threatened against  
100 any state or quasi-public agency employee or any employee of a large  
101 state contractor, which personnel action occurs within one year after  
102 the employee first transmits facts and information concerning a matter  
103 under subsection (a) of this section or sections 2 to 5, inclusive, of this  
104 act to the Auditors of Public Accounts or the Attorney General, there  
105 shall be a rebuttable presumption that the personnel action is in  
106 retaliation for the action taken by the employee under subsection (a) of  
107 this section.

108 (6) If a state officer or employee, as defined in section 4-141, a quasi-  
109 public agency officer or employee, an officer or employee of a large  
110 state contractor or an appointing authority takes or threatens to take  
111 any action to impede or cancel a contract between a state agency and a  
112 large state contractor, in violation of subdivision (1) of this subsection,  
113 such person may, not later than ninety days from the date of such  
114 violation, bring a civil action in the superior court for the judicial  
115 district of Hartford to recover damages, attorney's fees and costs.

116 (c) Any employee of a state or quasi-public agency or large state  
117 contractor, who is found to have knowingly and maliciously made  
118 false charges under subsection (a) of this section shall be subject to  
119 disciplinary action by [his] such employee's appointing authority up to

120 and including dismissal. In the case of a state or quasi-public agency  
121 employee, such action shall be subject to appeal to the Employees'  
122 Review Board in accordance with section 5-202, or in the case of state  
123 or quasi-public agency employees included in collective bargaining  
124 contracts, the procedure provided by such contracts.

125 (d) On or before September first, annually, the Auditors of Public  
126 Accounts shall submit to the clerk of each house of the General  
127 Assembly a report indicating the number of matters for which facts  
128 and information were transmitted to the auditors pursuant to this  
129 section during the preceding state fiscal year and the disposition of  
130 each such matter.

131 (e) Each contract between a state or quasi-public agency and a large  
132 state contractor shall provide that, if an officer, employee or  
133 appointing authority of a large state contractor takes or threatens to  
134 take any personnel action against any employee of the contractor in  
135 retaliation for such employee's disclosure of information to any  
136 employee of the contracting state or quasi-public agency or the  
137 Auditors of Public Accounts or the Attorney General under the  
138 provisions of subsection (a) of this section, the contractor shall be liable  
139 for a civil penalty of not more than five thousand dollars for each  
140 offense, up to a maximum of twenty per cent of the value of the  
141 contract. Each violation shall be a separate and distinct offense and in  
142 the case of a continuing violation each calendar day's continuance of  
143 the violation shall be deemed to be a separate and distinct offense. The  
144 executive head of the state or quasi-public agency may request the  
145 Attorney General to bring a civil action in the superior court for the  
146 judicial district of Hartford to seek imposition and recovery of such  
147 civil penalty.

148 (f) Each large state contractor shall post a notice of the provisions of  
149 this section relating to large state contractors in a conspicuous place  
150 which is readily available for viewing by the employees of the  
151 contractor.

152 (g) No person who, in good faith discloses information to the  
153 Auditors of Public Accounts or the Attorney General in accordance  
154 with this section shall be liable for any civil damages resulting from  
155 such good faith disclosure.

156 (h) As used in this section:

157 (1) "Large state contract" means a contract between an entity and a  
158 state or quasi-public agency, having a value of five million dollars or  
159 more; [, except for a contract for the construction, alteration or repair of  
160 any public building or public work;] and

161 (2) "Large state contractor" means an entity that has entered into a  
162 large state contract with a state or quasi-public agency.

163 Sec. 2. (NEW) (*Effective October 1, 2004*) For purposes of sections 2 to  
164 5, inclusive, of this act:

165 (1) "Claim" means any request or demand for money or property  
166 made (A) to a state officer, state employee, state agent or any other  
167 representative of the state, or (B) to a contractor, subcontractor, grantee  
168 or other person if the state provides any portion of the money or  
169 property requested or demanded, or if the state will reimburse directly  
170 or indirectly such contractor, subcontractor, grantee or other person for  
171 any portion of the money or property requested or demanded;

172 (2) "Knowing" and "knowingly" means a person, with respect to  
173 information, does any of the following: (A) Has actual knowledge of  
174 the information, (B) acts in deliberate ignorance of the truth or falsity  
175 of the information, or (C) acts in reckless disregard of the truth or  
176 falsity of the information;

177 (3) "Original source" means an individual who has direct and  
178 independent knowledge of information that the individual voluntarily  
179 provided to the Attorney General or the Auditors of Public Accounts,  
180 without public disclosure, and on which the Attorney General has  
181 based an action brought pursuant to section 4 of this act;

182 (4) "Person" means any natural person, corporation, partnership,  
183 association, trust or other business or legal entity; and

184 (5) "State" means any state agency in the executive, legislative and  
185 judicial branch, including any quasi-public authority as defined in  
186 section 1-120 of the general statutes.

187 Sec. 3. (NEW) (*Effective October 1, 2004*) (a) A person defrauds the  
188 state when such person:

189 (1) Knowingly presents, or causes to be presented, to any state  
190 official or employee a false or fraudulent claim;

191 (2) Knowingly makes, uses or causes to be made or used, a false  
192 record or statement to obtain payment or approval of a claim by the  
193 state;

194 (3) Conspires to defraud the state through the allowance or payment  
195 of a false or fraudulent claim;

196 (4) Pursuant to a certificate or receipt, has possession, custody or  
197 control of property or money used, or to be used, by the state and  
198 knowingly delivers, or causes to be delivered, to the state less property  
199 than the amount indicated on such certificate or receipt with the intent  
200 to knowingly conceal the property;

201 (5) Is authorized to make or deliver a document certifying receipt of  
202 property used, or to be used, by the state and with the intent to deceive  
203 the state, knowingly makes or delivers the receipt without verifying  
204 that the information on the receipt is true;

205 (6) Buys, or receives as a pledge of an obligation or debt, public  
206 property from an officer or employee of the state knowing that such  
207 officer or employee may not lawfully sell or pledge the property;

208 (7) Enters into an agreement, contract or understanding with an  
209 official or employee of the state knowing the information contained  
210 therein is false;

211 (8) Knowingly makes, uses or causes to be made or used a false  
212 record or statement to conceal, avoid or decrease an obligation to pay  
213 or transmit money or property to the state; or

214 (9) Is a beneficiary of an inadvertent submission of a false claim to  
215 the state and subsequently discovers the falsity of the claim but  
216 knowingly fails to disclose the false claim to the state within a  
217 reasonable time after discovery of the falsity of the claim.

218 (b) This section shall not be construed to apply to an act that would  
219 constitute workers' compensation fraud pursuant to section 31-290c of  
220 the general statutes, an act that violates any provision of title 12 of the  
221 general statutes or an act where the alleged loss to the state is less than  
222 twenty-five thousand dollars.

223 Sec. 4. (NEW) (*Effective October 1, 2004*) (a) Whenever the Attorney  
224 General has reason to believe that a person may have defrauded the  
225 state, in violation of section 3 of this act, the Attorney General may  
226 investigate such act and bring a civil action in the superior court  
227 against such person to recover civil penalties and damages as provided  
228 in this section and to obtain such equitable relief as the court deems  
229 appropriate.

230 (b) Proof that a person acted with the specific intent to defraud the  
231 state shall not be required for a finding that such person has defrauded  
232 the state pursuant to section 3 of this act. Innocent mistake shall be an  
233 affirmative defense to any action brought pursuant to this section.  
234 The state shall prove all essential elements of such cause of action,  
235 including damages, by a preponderance of the evidence. A  
236 corporation, limited liability corporation, partnership or other person  
237 shall be liable to the state for the acts of its agent where the agent acted  
238 with apparent authority to defraud the state in violation of section 3 of  
239 this act.

240 (c) Any person who is found by a court of competent jurisdiction to  
241 have defrauded the state shall be liable to the state for (1) three times  
242 the amount of damages that the state sustained due to the fraudulent



243 act, (2) a civil penalty of not less than five thousand dollars and not  
244 more than ten thousand dollars for each act that constitutes a violation  
245 of section 3 of this act, and (3) reasonable attorney's fees and costs.

246 (d) Notwithstanding the provisions of subsection (c) of this section,  
247 a court may, within its discretion, reduce an award of damages to the  
248 state upon finding any violation of section 3 of this act, provided such  
249 award includes an award for the consequential damages the state  
250 sustained as a result of the person's violation. The court may, within its  
251 discretion, decide not to impose a civil penalty against such person  
252 provided the court finds all of the following:

253 (1) The person committing the violation provided the Attorney  
254 General with all the information known to such person about the  
255 violation not later than thirty days after the date on which the person  
256 first obtained the information;

257 (2) The person fully cooperated with any state investigation of such  
258 violation; and

259 (3) At the time such person provided the Attorney General with  
260 such information, no criminal prosecution, civil action or  
261 administrative action had commenced with respect to the defrauding  
262 of the state, and the person did not have actual knowledge of the  
263 existence of an investigation into the defrauding of the state.

264 Sec. 5. (NEW) (*Effective October 1, 2004*) (a) The superior court shall  
265 approve any settlement of an action brought under section 4 of this act.  
266 In approving a settlement of, or rendering a judgment in, an action  
267 brought under section 4 of this act, the court, upon application by the  
268 Attorney General, may award to an original source not more than five  
269 per cent of the award of actual damages paid to the state, taking into  
270 consideration the significance of the information provided by the  
271 original source to the court's finding of a violation of section 3 of this  
272 act or the settlement of the action.

273 (b) Notwithstanding the provisions of subsection (a) of this section,

274 an original source is not entitled to receive a portion of any court  
275 judgment or settlement if: (1) The action brought pursuant to section 4  
276 of this act is based on allegations or transactions that are the subject of  
277 another criminal, civil, administrative or legislative proceeding; (2) the  
278 information provided by the original source is based on the public  
279 disclosure of allegations or transactions in a criminal, civil,  
280 administrative or legislative proceeding or hearing or from the news  
281 media; (3) the original source is an individual who is or was employed  
282 by the state whose scope of employment includes investigating or  
283 prosecuting fraud against the state and the information was gathered  
284 in the course of such employment; or (4) the original source planned,  
285 initiated or knowingly participated in the defrauding of the state.

This act shall take effect as follows:	
Section 1	<i>October 1, 2004</i>
Sec. 2	<i>October 1, 2004</i>
Sec. 3	<i>October 1, 2004</i>
Sec. 4	<i>October 1, 2004</i>
Sec. 5	<i>October 1, 2004</i>

**GAE**      *Joint Favorable Subst.*